

REMARKS

Applicant has reviewed and considered the Office Action mailed on March 19, 2009 and the references cited therewith.

No claims are amended, canceled, or added. As a result, claims 1-4, 8, 12-13, 16-20, 22-23, and 26-37 are still pending in this application.

USC § 103 Rejection of the Claims

Claims 1, 2, 4, 8, 12-13, and 16-20 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) in view of *Johnson* (U.S. Patent No. 5,839,071).

To support an obviousness rejection, the Examiner must show that “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a) [emphasis added]. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

“Office personnel fulfill the critical role of fact finder when resolving the *Graham* inquiries. ... Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.” MPEP 2141(II) [emphasis added]. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007). In *KSR*, the Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d

1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). MPEP 2141.02 (I) “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claim 1 is an independent claim directed to a method comprising: (a) at an access point in a wireless network that includes a first wireless transceiver following a first wireless standard and a second wireless transceiver following a second wireless standard to provide wireless network access for wireless client devices, determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal; and (b) when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver.

Neither of the relied upon references disclose or suggest “determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal” or “when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver.” As stated in a previous response, Chuah is directed to a communication protocol between a gateway and an access point and teaches basic load balancing to relieve a transceiver from over usage (paragraph [0065] of Chuah). That is, Chuah teaches a gateway that rejects an open service access request from a new user if the requested transceiver is being over used (paragraph [0066] of Chuah). The rejection forces the LAN card of the mobile host to reassociate with a different transceiver in the access point (paragraph [0066] of Chuah). Chuah does not teach, nor does it suggest, “determining whether a wireless client device having a low

quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal.” Similarly, Chuah does not teach or suggest, “when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver.” Chuah is simply rejecting an access request received from a mobile host when it is believed that granting the access will over burden the corresponding transceiver. There is no discussion about differences in the quality of the signal between different user devices or how this can be used to make a decision to have a device move to another transceiver.

The Examiner takes the position that Johnson meets the claimed limitations of “determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal” and “when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver.” The Applicants respectfully disagree. The Examiner states that Johnson, in column 7, lines 44-61, states that “the mobile stations not only measure the signals level from the serving base station, but also the received signal quality, and on the basis if the signal level and quality measurements, it is possible to identify degraded communication which can be used as a basis for the base station to hand over a mobile station to a new and better quality channel on the same base station, which is known as intra-cell handover.” It is submitted that the Examiner is misreading Johnson. Johnson is not stating that signal level and quality measurements are being used as the basis of an intra-cell handover in column 7, lines 55-61. Johnson is stating that the received signal strength for “unused timeslots” is being measured to provide a direct measure of “interference.” Because the timeslots are not being used, any signal that is present will be interference. The interference information may then be used as a basis for a intra-cell handover. Further reading in Johnson reveals that Johnson uses the delay of received signals to distinguish between the inner area and the outer area illustrated in Fig. 13 (see, e.g., column 10, line 64 to column 11, line 53 of Johnson). Thus, Johnson does not disclose or suggest a determination of whether devices have low or high quality signals, a determination of whether a low quality signal device is sharing a transceiver with a high quality

signal device, or moving a low quality signal device when sharing is found.” Therefore, the Examiner has made factual errors within the rejection as to the content of the cited references.

As stated above, to support an obvious rejection, the Examiner needs to ascertain the differences between the prior art and the claims at issue and then needs to show that “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). The Examiner has not done this in the present office action.

Based on the foregoing, it is submitted that the Examiner has failed to provide a prima facie case of unpatentability with regard to independent claim 1. It is further submitted that the combination of Chuah and Johnson does not render obvious the subject matter of independent claim 1. Reconsideration and allowance of claim 1 is therefore respectfully requested. Similar arguments apply to independent claims 12 and 18.

Claims 2, 4 and 8, claim 13 and 16-17, and claims 19-20 are dependent claims that depend either directly or indirectly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide further bases for patentability.

Claim 3 was rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) and *Johnson* (U.S. Patent No. 5,839,071) as applied to claim 1 and further in view of *Ganz et al.* (U.S. Patent No. 6,049,549).

Claim 3 is a dependent claim that depends directly from independent claim 1. Consequently, this claim is allowable for at least the same reasons as claim 1.

Claims 29, 32, and 35 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1), *Johnson* (U.S. Patent No. 5,839,071) as applied to claims 1, 12, and 18 and further in view of *Esteves et al.* (U.S. Patent No. 6,687,510).

Claims 29, 32, and 35 are dependent claims that depend directly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims.

Claims 27, 28, 30, 31, 33 and 34 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1), *Johnson* (U.S. Patent

No. 5,839,071) as applied to claims 1, 12 and 18 and further in view of *Well Known Prior Art – Official Notice*.

Claims 27 and 28, claims 30 and 31, and claims 33 and 34 are dependent claims that depend directly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide further bases for patentability. For example, claim 27 further defines the “first wireless standard” of claim 1 as being “a standard that achieves better throughput than said second wireless standard” and the “second wireless standard” of claim 1 as being “a standard that achieves better range than said first wireless standard.” It should be stressed that the obviousness analysis must consider the invention “as a whole.” [See 35 U.S.C. 103.] Neither Chuah, Johnson, nor the well known prior art teach or suggest switching a wireless device having a low quality signal to a wireless transceiver following a standard that achieves better range from a wireless transceiver that follows a standard that achieves better throughput when it is determined that the wireless device having a low quality signal is sharing the better throughput wireless transceiver with a wireless device having a high quality signal. Claim 28 further defines the “first wireless standard” of claim 1 as being “IEEE 802.11a” and the “second wireless standard” of claim 1 as being “IEEE 802.11b,g.” Neither Chuah, Johnson, nor the well known prior art teach or suggest switching a wireless device having a low quality signal to a wireless transceiver following IEEE 802.11b,g from a wireless transceiver that follows IEEE 802.11a when it is determined that the wireless device having a low quality signal is sharing the IEEE 802.11a wireless transceiver with a wireless device having a high quality signal. Similar arguments apply to claims 30, 31, 33, and 34.

As stated in MPEP 2144.03, it is not appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. It is asserted that the facts noticed by the Examiner in the present rejection are not instantly and unquestionably demonstrable as being well known. The Applicants therefore traverse the Examiner’s findings based on official notice. It is respectfully requested that the Examiner provide documentary evidence of the noticed facts in the next official communication.

Claims 22, 23, and 26 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) and *Johnson* (U.S. Patent No. 5,839,071) and further in view of *Fox et al.* (U.S. Patent No. 6,879,807).

Fox was cited to show that dipole antennas coupled to wireless transceivers were known at the time of the invention. Claim 22 should be allowable for at least the same reasons as independent claim 12 discussed above.

Claims 23 and 26 are dependent claims that depend directly from independent claim 22. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims.

Claims 36 and 37 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1), *Johnson* (U.S. Patent No. 5,839,071), and *Fox et al.* (U.S. Patent No. 6,879,807) as applied to claim 22, and further in view of *Well Known Prior Art – Official Notice*.

Claims 36 and 37 are dependent claims that depend directly from independent claim 22. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide independent bases for patentability for substantially the same reasons discussed above with respect to claims 27 and 28. As described above, it is respectfully requested that the Examiner provide documentary evidence of the facts officially noticed.

The present office action relies upon at least one 35 USC § 102(a) or 35 USC § 102(e) reference. Please note that no part of the present response is to be deemed an admission that these references are valid prior art in the present application. As such, the Applicants reserve the right to swear behind these references at a later date.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (480-948-3745) to facilitate prosecution of this application.

Respectfully submitted,

GREG A. PEEK

By his Representatives,

CUSTOMER NUMBER: 45643
480-948-3745

Date: August 19, 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 19th day of August, 2009.

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